

A 'right to nutrition' in Zambia: Linking rhetoric, law and practice



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Zambians in all walks of life are affected by malnutrition, and working through human rights is one key way to address this injustice. Based on research aiming to understand how a 'right to nutrition' is perceived by different actors globally and in Zambia, this brief presents a clear framework for a rights-based approach to nutrition in Zambia. This framework identifies *rhetorical, legal and practical* functions of human rights, and offers a way to think through clearly how different actors might work on the different aspects of rights.

Addressing these three aspects of a right to nutrition all together – instead of by very separate constituencies as happens now – is fundamental to a coherent rights-based approach to nutrition. This brief outlines which actors need to come together – from law and policy, activism and communities, across global, national and local levels – and suggests how to start. It lays out the Zambian policy, legal and practical environment as it stands, and suggests actions to move forward in each of these areas in ways that are consistent with the different aspects of rights. Through these steps, Zambia can become known as a hub of action on a right to nutrition, to join with others in using human rights to address the injustice of malnutrition.

Zambian citizens in all walks of life are affected by malnutrition¹. The major issues by numbers are child stunting, or being clinically too short for their age, at 35% of children under 5; child wasting, or being too thin for their height, at 5% of children (more seriously associated with severe illness and death); and hunger, not having enough calories for an active life, at 45% of the population (adults and children), particularly seasonally. Overweight is a growing problem, at 24% of women; and diet-related diseases such hypertension and diabetes affect over half of adults, and rising. Diets at either end of the spectrum of malnutrition are generally monotonous and lack diversity, fibre and nutrients².

Many people are working hard to address these issues, in lots of different ways. One of those ways is through working on human rights, and our research aimed to understand how a 'right to nutrition' is perceived by different actors globally and in Zambia, and how differences in interpretation affect the potential of rights for reducing malnutrition in practice. We undertook a document analysis to understand what is written in national, regional and international policies and strategies, including a legal analysis of legislation and case-law in Zambia. Then we undertook interviews with 23 policy experts and 92 Zambian citizens to understand how the concepts the documents contain are used and understood.

Rights as rhetorical: Advocacy and ethics

A right to nutrition has been discussed globally for decades³. Particular debates centre on whether a right

as part of, a right to food. A right to food is more established, but good nutrition requires adequate food in addition to health services and, for child nutrition, adequate childcare. Different people prefer different options, but multiple UN agencies and international organisations claim a human rights focus in their nutrition work (see right).

At the international level, there is a whole raft of covenants, conventions and strategies that affirm the right to nutrition – specifically – and to its various determinants. These relate either to everyone (such as

The Scaling Up Nutrition

movement

right to food and good nutrition"

Scaling Up Nutrition movement
Guiding Principles 2016

"[a] child is further entitled to the following economic and social rights [including] adequate nutrition"

Government of the Republic of Zambia, [draft] Bill of Rights 2016, page 14, para 48.5(d)

"The UN is steered by a Rights-Based approach to nutrition"

United Nations Global Nutrition Agenda 2015

"The Government reaffirms that equity of access to food and nutrition is a basic human right"

Government of the Republic of Zambia, National food & nutrition policy 2008, page 34, para 5.1(b)

in the 1948 Universal Declaration of Human Rights) or to specific populations (such as in the 1979 Convention on the Elimination of All Forms of Discrimination

against Women, or the 1990 African Charter on the Rights and Welfare of the Child). They relate to broad over-arching rights (such as the right to life), as well as much more specific rights (such as the right to food).

Human rights are also invoked in domestic policy in Zambia. The national guiding Vision 2030 is based on 'respect for human rights' as one of seven basic principles; and a right to nutrition is invoked in the country's draft 2016 Bill of Rights (that did not pass the constitutional referendum vote), and the 2008 National Food and Nutrition Policy (see quotes on previous page). In the 2011 National Food and Nutrition Strategic Plan which operationalises the 2008 policy however, the document only notes that 'the use of the rights-based approach has also been identified as a catalyst' to achieving nutrition targets; and the 2013 'Most Critical Days Programme' focused on child malnutrition that emerged from the strategy does not mention rights at all.

Human rights are therefore clearly integrated with ideas of nutrition – and of nutrition's core determinants, food and health – in written covenants, conventions and policy across international, regional and national levels. But this rights language is used without clear meaning in some instances, across levels of documents, and the language becomes weaker and

less defined (and eventually disappears altogether), and the population groups covered narrower (focusing on children and occasionally women) as the documents get closer to being actionable within the Zambian national context.

In interviews for this research, several respondents at international and national levels suggested that rights language was being deployed as a rhetorical device rather than a clear basis for action. Some policy actors described rights as occurring in preambles but being lost in practice, while some civil society actors described rights as window-dressing, or a public relations measure. We find that the language of rights is largely rhetorical in written policy and international covenants – providing moral leverage, a range of conceptual ideas, and a call to act – but not directing action in clear or consistent ways.

Using the rhetorical aspect of rights can be an important part of advocacy, to set the tone of debates on how to address malnutrition in all its forms, and as an ethical 'call to action'. Being clear which individuals or organisations wrote or ratified these rights in policies and covenants can also help with pinpointing where accountability for the rights should lie. The rhetorical function of rights is therefore useful, but is stronger when combined with other facets of rights.

Rights as legal: Building on the law

The rights language in global conventions does not confer legal rights to Zambian citizens, even if the Zambian government has ratified them. Zambia has ratified all seven key UN international human rights instruments as well as the treaties of the African regional human rights system. In theory there is the option to complain to the relevant UN Treaty Body, but for the ordinary Zambian this is so distant as to barely count as an option. In practice then, these international rights are unenforceable and inaccessible by the individual right holder.

"You can actually sue them, it's just that maybe we don't know that, but we can sue them. We can even sue the government... we just don't know how"

Zambian urban youth focus group, 2019

For a right to be applicable under the Zambian legal system, an international agreement must first be domesticated under the 2016 Ratification of International Agreements Act (previously a purely executive function of the President). For instance, the

Affiliation and Maintenance of Children Act (1995) domesticates the UN Convention on the Rights of the Child (UNCRC) into Zambian law. But it makes no reference to the original UNCRC provisions relating to food, nutrition, health or care; these rights are therefore not justiciable in the Zambian courts. Only those aspects of conventions that have been domesticated can be directly enforced by the courts.

As well as drawing on domesticated conventions, a strong legal right to nutrition would have clear content and scope and a strong enforceability mechanism for the individual right-holder (usually a citizen) to hold the duty-bearer (usually the state) to account. During the course of our research, a critical juncture occurred whereby this case law emerged in Zambia: The case of *George Peter Mwanza and Melvin Beene v Attorney General* (2019) relates to food provision for adult prisoners. In that case, the appellants were HIV-positive, and were in custody at Lusaka Central Prison. They claimed that the state-provided food was inadequate in quantity and deficient in nutritional content, and did not take into account their health

condition. As such, this was a breach of their rights to life and to be protected from inhuman and degrading treatment under the Zambian constitution. The Supreme Court of Zambia agreed, finding in favour of the appellants and holding that these rights had been breached.

The case itself is limited, in that the men were held to be entitled to be provided with different food on account of their HIV status and incarceration. Here, what we clearly see is that the use of national law brings a strengthening of policy: It makes it justiciable, enforceable in a national court of law. But it also brings a narrowing of focus: Those broad and sweeping rights that were indivisible and for everyone in the international covenants, are highly specific in case-law (and therefore legal precedent) to a population of HIV-

positive prisoners.

The potential ramifications of this case are dramatic, however: The Supreme Court of Zambia held that the right to life encompasses a right to nutrition. With this precedent, our work has found a number of legislative frameworks that offer potential avenues for strategic legal action that would *de facto* further support nutrition rights for Zambian citizens⁴. Further public-interest litigation is possible if advocacy and civil-society groups choose to take it on. Taking a case to the courts would require a careful consideration of the facts and a determination as to which legal framework may offer the best and most promising outcome. Though slow and narrow, building legal avenues for a right to nutrition has the potential to hugely strengthen the policy rhetoric.

Rights as practical: Education, access and accountability

Using human rights language and rhetoric for nutrition normalises these approaches, and bringing legal cases strengthens the possibilities for enforcement, but none of this is useful unless ordinary citizens are aware of their rights and can access the courts. There are three key practical aspects to consider in taking a right to nutrition forward in Zambia.

First: *Where does accountability sit?* Views on what a right to nutrition means in practice change across levels, from international technical experts to national citizens. This means that a right to nutrition lacks a norm: a morally grounded, collectively shared, sufficiently specific, socially obligatory idea with clear duties and consequences for defined actors. For malnutrition, while the moral frame for action clearly exists and has shaped rhetoric, the lack of a norm means there is no consensus on who should be acting, what they should be doing, or what the consequences should be if they do not. This means that accountability is scattered – and accountability is the key mechanism that makes rights an effective approach, and is the major added value of a rights-based approach. **It is therefore up to nutrition rights advocates to come together and look at the policy and legal environment and decide who is accountable for different aspects of the right.**

Second: *How to strengthen legal enforcement?* Legal consequences for lack of accountability are one route to enforcement, but not all citizens can access the law equally. Since Zambia has a dualist legal system encompassing customary law (where most local

disputes or issues are settled) as well as the common-law legal system (for matters relating to the formal law), the courts where these kinds of human rights cases might be heard are not easily accessible to much of the population. **It is therefore up to nutrition rights advocates to bring public-interest litigation, building on previous cases and drawing on international covenants that have been domesticated in Zambia, to strengthen the legal route. At the same time, it is important to strengthen the access of ordinary citizens to the courts and to the formal legal system.**

Third: *How to engage and educate citizens?* Some have argued that practices towards a right to nutrition should come from affected communities themselves, an approach which echoes participatory approaches to development. Our work suggests that to find consensus on norms around a right to nutrition, one would have to work with very specific groups (likely small, homogenous and localised) because definitions and understandings of both nutrition and rights are varied. Some rights proponents have suggested that rights education is key here, and that rights systems only work when the rights holders know what their rights are, so a careful balance would have to be struck between allowing principles to emerge from communities, while also introducing education from a normative rights perspective. **It is therefore up to nutrition rights advocates to educate Zambian citizens in accessible ways in issues of rights, and in how their human rights can be used to address nutrition in ways that are practical for them.**

Working together: crossing boundaries for greater effect

This study of the right to nutrition in global and Zambian contexts has highlighted the **rhetoric** in calls for rights in many policies, covenants and organisational mandates. It has also shown how this language has shaped in more concrete ways the engagement of Zambian **law** with a right to nutrition – albeit one of more limited scope in order to achieve legal enforceability – and the possibility that formative moments can be grasped by activists to shape the law in ways even more supportive of the right. It has also highlighted the lack of action in **practice**, particularly in the areas of participation and accountability, that might enable ordinary Zambian citizens to access these rights through legal mechanisms or engagement with authorities.

We argue that explicitly acknowledging the existence of these *rhetorical, legal and practical* functions of human rights is an important first step.

This framework (see right) **offers a way to think through clearly how different actors might work on the different aspects of rights, depending on their sector or their position and the things they already work on.**

Addressing these three aspects of a right to nutrition all together – instead of by very separate constituencies as happens now – is fundamental to a coherent rights-based approach to nutrition. This requires working across sectors and disciplines not usual to nutrition action.

It means engaging the legal community to understand options for public interest litigation, or using existing domesticated conventions and domestic law to enforce accountability. It means engaging with activist

communities, such as the strong community built up around the issue of HIV and access to treatment since the 1990s, to learn about activism on other related issues with a rights basis, that may be more political than nutrition experts are used to. It means engaging with broad human rights communities – particularly those working on rights to food and nutrition, and other cultural, social and economic rights – at Africa regional level and at global level, to bring their insights and approaches to the Zambian context. It means engaging more strongly with communities, enabling their participation in determining how human rights help them to secure good nutrition within the contexts of their own lives. And it means engaging through all these routes with policymakers

who can institutionalise rights-focused policy and regulation.

Bringing these communities together with those traditionally working on nutrition – from NGOs, the UN, and other development actors – offers a new angle to

nutrition work that works alongside government even as it finds ways to hold specific duty-bearers accountable for their own laws and policies.

Practical steps are likely to include informal conversations to identify those interested in working to address nutrition through rights-based approaches; workshops bringing these groups together to explain, discuss and decide ways forward on the rhetorical, legal and practical aspects of rights; and making Zambia known in the world as a hub of action on a right to nutrition, to join with others in the long road to using rights to address the injustice of malnutrition.

Rights as rhetorical	Rights as legal	Rights as practical
Normative function <ul style="list-style-type: none">• Setting the tone / call to action• Advocacy	Path dependency and formative moments <ul style="list-style-type: none">• Justiciability• Access to law• Legal activism	Context and localization <ul style="list-style-type: none">• Citizen participation and rights education• Authority accountability and consequences



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¹ Micha R, Mannar V, Afshin A, Allemandi L, Baker P, Battersby J, Bhutta Z, Chen K, Corvalan C, Di Cesare M, Dolan C. 2020 *Global nutrition report: action on equity to end malnutrition*. Development Initiatives, Bristol, UK

² Mwanamwenge M and Harris J, 2017. *Agriculture, food systems, diets and nutrition in Zambia*. Hivos/IIED Discussion Paper. London.

³ Oshaug A, Eide WB, Eide A. Human rights: a normative basis for food and nutrition-relevant policies. *Food Policy*. 1994 Dec 1;19(6):491-516.

⁴ Kaaba, O, and Gibbons, S. 2021. *A Right to Nutrition in Zambia: A Legal Analysis*. IDS working paper. IDS, Brighton, UK